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FILED
JUN 13 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 160

SPRINGFIELD, OHIO, LOCAL NO. 352, OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, ET AL.,

Petitioners,

vs.

WILLIAM SETTOS, LESSEE OF LIBERTY THEATRE, D. B. A. LIBERTY THEATRE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO AND BRIEF IN SUPPORT THEREOF.

JOSEPH A. PADWAY,
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Counsel for Petitioners.

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WILLIAM SETTOS, LESSEE OF LIBERTY THEATRE, D. B. A. LIBERTY THEATRE.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

Local No. 352 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Harold J. German, John Strong, Lloyd Blue, Claude E. Henkle, Robert Mills, John C. Lyons, John C. Cottrell and Arthur Wolfe, your petitioners, respectfully show this Honorable Court:

A.

Summary Statement of Matter Involved.

The individual petitioners are members of petitioner labor organization, Local No. 352 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, affiliated with the American Federation of Labor and the Ohio State Federation of Labor.

William Settos is the operator and lessee of a motion picture theatre called "The Liberty Theatre," in Springfield, Ohio, and employs two motion picture machine operators.

The theatre was closed for alterations for approximately six weeks in 1938. It reopened for business on October 14, 1938.

Prior to the scheduled reopening, representatives of Local No. 352 called upon Mr. Settos and requested that he employ union labor, and that he sign a contract with the union providing for employment of union members only and prescribing wages, hours and other working conditions. Mr. Settos refused to sign such an agreement.

Accordingly, on October 12th the union established a single picket who paraded up and down in front of the theatre, carrying a sign upon which were the words:

> "This theatre is unfair to Motion Picture Operators, Local No. 352."

It is undisputed in the pleadings, evidence and findings that the picket consisted of a single person, and that it was entirely peaceful, without the slightest use of force, violence, threats, intimidation, disorder, or the like.

On October 14, 1938, plaintiff below filed a petition (R. 4), and on the same day a temporary restraining order was issued without notice or hearing by the Court of Common Pleas of Clark County. This temporary order re-

strained petitioners, among other things, "from performing all other acts which may in any way injure or damage plaintiff in his business * * * and from all picketing of plaintiff's place of business, * * *" (R. 1).

An amended answer was filed by petitioners on December 21, 1938 (R. 9). Trial was had before the court on June 13, 1939. On February 6, 1940, the court issued a written decision (R. 12) in which he concluded:

> "The temporary restraining order heretofore issued will be made permanent" (R. 16).

Entry, in accordance with this decision, was filed February 23, 1940 (R. 3).

Thereafter, the case came on for trial on appeal on questions of law and fact before the Court of Appeals of Clark County, which rendered its decision on July 23, 1940 (R. 52), finding in favor of the plaintiff below, and entered its order and decree on September 17, 1940 (R. 51), enjoining and restraining petitioners from, among other things, "all picketing of Plaintiff's theatre * * *" (R. 51).

The cause was thereafter submitted to the Supreme Court of Ohio upon motion to direct the Court of Appeals to certify its record (R. 59) and upon an appeal as of right on the ground that debatable constitutional questions were involved (R. 58).

On February 26, 1941, the Supreme Court of Ohio ordered that the motion for an order directing the Court of Appeals of Clark County to certify its record be overruled (R. 58), and also ordered that appellee's motion to dismiss appeal filed as of right be sustained (R. 58), thereby affirming the order and decree of the Court of Appeals of Clark County.

Application for rehearing, timely filed (R. 62), was denied on March 19, 1941 (R. 57).

B.

Statement as to Jurisdiction.

Jurisdiction is invoked under Title 28, U. S. C. A., Section 344(b) (Judicial Code, Section 237(b) as amended by the Act of February 13, 1925.)

The Court of Common Pleas acknowledged in its written decision the argument made by defendants in their brief to the effect that under the constitutional right of "freedom of speech" the picketing in the instant case is constitutionally protected. This argument the court expressly rejected, relying solely on the fact that the plaintiff's employees were not members of the union, and there was no dispute between the plaintiff and his employees concerning wages, hours or working conditions. The court said:

> "As sacred and inviolable as the right of freedom of speech are the rights to personal liberty, property, the right of freedom to contract, and the right to carry on one's business in such manner as to him seems best, so long as he does not infringe upon the rights of others. That these rights are alike guaranteed by the fundamental law of the land and apply alike to all persons is so well established as to require no citations of authority to support it" (R. 15).

In the Court of Appeals of Clark County defendants repeated the arguments made before the lower court. Reference was made in submitted briefs to the cases of *Thornhill* v. *Alabama*, 310 U. S. 88, and *Carlson* v. *California*, 310 U. S. 106, in support of the argument that states may not, under the Fourteenth Amendment, prohibit peaceful picketing. The court ruled on this question adversely to petitioners on the same ground as did the Court of Common Pleas. It considered "essential" that "the controversy" seemed to be between the "theatre

owner and the union" and not between the "proprietor and his employees", and held:

> "Under these conditions, there is no labor dispute which would, under the decisions, justify the union in picketing the property of the plaintiff in an attempt to force him to enter into a contract with the union" (R. 54).

The court relied exclusively on the case of *Crosby* v. *Raph* (sic), 136 O. S. 352, and quoted the following language from that decision:

> "The right to contract, the right to do business and the right to labor freely and without restraint are all constitutional rights, equally sacred, and the privilege of free speech cannot be used to the exclusion of other constitutional rights * * *" (R. 54).

Petitioners sought to obtain an appeal as of right to the Supreme Court of Ohio on the ground that it was "a case involving debatable constitutional questions" (R. 56), and also sought to obtain a review by way of a motion to certify the record. Assignments of error were filed in the Supreme Court of Ohio, which included, among other things, the following:

> "8. The decree of said court deprived the defendants and all members of the local union of liberty, freedom of speech, and equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States" (R. 61).

The Supreme Court of Ohio overruled the motion to certify the record, and sustained appellee's motion to dismiss the appeal as of right. The journal entry referring to same recites in part as follows:

> "This cause came on to be heard upon the transcript of the record of the Court of Appeals of Clark

> County, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel. On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause * * * Ordered, That a special mandate be sent to the Court of Appeals of Clark County, to carry this judgment into execution" (R. 58).

Thereafter, your petitioners filed an application for rehearing. This application pointed to the decisions of this Honorable Court in the cases of *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc.*, No. 1, decided February 10, 1941, and *American Federation of Labor* v. *Swing*, No. 56, decided February 10, 1941, and after discussing the same concluded "these two decisions of the United States Supreme Court show as clearly as it is possible to show anything that the decisions of the Common Pleas Court and the Court of Appeals in the present case * * * deprive the appellants of constitutional rights of freedom of communication" (R. 64). The Supreme Court of Ohio denied the rehearing (R. 57).

Thus, from the beginning and throughout the litigation of this cause in the courts of Ohio the Federal question of freedom of speech was raised and passed upon by the courts. Throughout, your petitioners resisted the injunction on the ground that it was repugnant to the Fourteenth Amendment to the Constitution of the United States, in that it deprived petitioners of the right of freedom of speech.

The following cases are believed to sustain jurisdiction: *American Federation of Labor* v. *Swing, supra; Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc., supra; Journeymen Tailors' Union, Local 195* v. *Millers, Inc.*, decided by Supreme Court of the U. S. March 3, 1941; *Van Huffel* v. *Harkelrode*, 284 U. S. 225.

C.

The Question Presented.

Have the courts of Ohio deprived petitioners of their freedom of speech in violation of the Fourteenth Amendment to the Constitution of the United States?

D.

Reasons Relied on for Allowance of Writ.

The decision of the Court of Appeals of Clark County, Ohio, which the Supreme Court of Ohio has affirmed, determines a Federal question of substance in a manner directly at variance with the following applicable decisions of this Honorable Court: *American Federation of Labor* v. *Swing, supra; Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc., supra; Journeymen Tailors' Union, Local 195* v. *Millers, Inc., supra; Thornhill* v. *Alabama, supra; Carlson* v. *California, supra.*

We deem it appropriate to advise this Honorable Court of the anomalous situation respecting the right peacefully to picket in the State of Ohio. In March of 1940, the Supreme Court of Ohio rendered a decision depriving a union of the right peacefully to picket solely on the ground that none of the union members were employed by the picketed establishment. (*Crosby* v. *Rath, supra.*) This Honorable Court denied certiorari to review this case on the same day that it announced its decisions in the *Swing* and *Meadowmoor* cases, *supra.* It is indisputable that the legal conclusions and the holdings in those two decisions applied to and were determinative of the issues involved in the *Crosby* case.

The Ohio Supreme Court's decision in the instant case, rendered sixteen days after the decisions in the *Swing* and *Meadowmoor* cases, ignored those decisions and reaffirmed

its initial position taken in the *Crosby* case. Possibly the State Supreme Court was not at that time aware of the *Swing* and *Meadowmoor* decisions. But petitioners applied for a rehearing (R. 62), and devoted the entire discussion in their application to this Honorable Court's holdings in the *Swing* and *Meadowmoor* cases pointing to their necessary conclusiveness on the issues raised by the instant case. Nevertheless, the Ohio Supreme Court denied a rehearing. Thus, working people in the State of Ohio are still denied the right peacefully to picket guaranteed by the Fourteenth Amendment to the United States Constitution as interpreted by this Honorable Court.

Unless this Honorable Court grants certiorari to review and set aside the judgment of the Supreme Court of Ohio, the working people of that state will not enjoy the same rights guaranteed by the same Constitution that are now enjoyed by working people in the State of Alabama (*Thornhill* v. *Alabama, supra*), California (*Carlson* v. *California, supra*), Illinois (*American Federation of Labor* v. *Swing, supra*) New Jersey (*Journeymen Tailors' Union, Local 195* v. *Millers, Inc., supra*) and, of course, all other jurisdictions subject to the Constitution of the United States.

Prayer for Writ.

Wherefore, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Ohio, commanding that Court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled "No. 28380-William Settos, Lessee of Liberty Theatre, d. b. a. Liberty Theatre, Plaintiff-Appellee, v. Springfield, Ohio, Local No. 352, of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators

of The United States and Canada, et al., Defendants-Appellants," and that the judgment of the Supreme Court of Ohio, entered in the above entitled cause on February 26, 1941, affirming the decision of the Court of Appeals of Clark County, Ohio, by dismissing an appeal as of right on the ground that no debatable constitutional question was involved, may be reviewed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

JOSEPH A. PADWAY,
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